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**Public Safety & Emergency Preparedness  
Committee**

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**HB 1385**

**Brief Description:** Modifying provisions relating to sexual misconduct by school employees.

**Sponsors:** Representatives Haler, Van De Wege, Kessler, Pearson, Takko, Klippert, Blake, Morrell, Dammeier, Warnick, Smith and Johnson.

**Brief Summary of Bill**

- Provides that a school employee is guilty of sexual misconduct with a minor in the first degree when he or she has sexual intercourse with a registered student of the school who is at least 16 years old but less than 20 years old, if the employee is at least 60 months older than the student.
- Provides that a school employee is guilty of sexual misconduct with a minor in the second degree if he or she has sexual contact with a registered student of the school who is at least 16 years old but less than 20 years old, if the employee is at least 60 months older than the student.

**Hearing Date:** 1/28/09

**Staff:** Lara Zarowsky (786-7123)

**Background:**

A person is guilty of the **class C felony** of sexual misconduct with a minor in the **first degree** when the person:

- abuses a supervisory position within a significant relationship with another person who is at least 60 months younger in order to engage in **sexual intercourse** with the victim; or
- is a school employee who has sexual intercourse with a registered student of the school who is at least 16 years old, if the employee is at least 60 months older than the student; or
- is a foster parent and has sexual intercourse with his or her foster child who is at least 16.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A person is guilty of the **class B felony** of sexual misconduct with a minor in the **second degree** when the person:

- abuses a supervisory position within a significant relationship with another person at least 60 months younger in order to engage in **sexual contact** with the victim; or
- is a school employee who has sexual contact with a registered student of the school who is at least 16 years old, if the employee is at least 60 months older than the student; or
- is a foster parent who has sexual contact with his or her foster child who is at least 16.

Earlier this month, Division II of the Washington Court of Appeals interpreted the sexual misconduct with a minor statute in the case of *State v. Hirschfelder*. In that case, a high school choir teacher was alleged to have had sexual intercourse with an 18-year-old member of the high school choir shortly before the student graduated from high school. The teacher was charged with one count of first-degree sexual misconduct with a minor. The question considered by the Court of Appeals was whether the statute prohibits sexual intercourse with minor students aged 16 and 17 only, or with *all* students 16 and older.

The court held the statute is ambiguous, but that legislative history indicates the Legislature intended to criminalize only sexual contact between school employees and students aged 16 and 17.

**Summary of Bill:**

The crime of sexual misconduct with a minor in the first degree is clarified to criminalize sexual intercourse between school employees and registered students over the age of 16 and under the age of 20.

The crime of sexual misconduct with a minor in the second degree is clarified to criminalize sexual contact between school employees and registered students over the age of 16 and under the age of 20.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.